



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
DEC 10 2012

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7673 2598

Mr. and Mrs. Roy Orling  
936 Dustwhirl Drive  
Union, Kentucky 41091

Re: Subpoena Duces Tecum issued pursuant to Section 11(c) of the  
Toxic Substances Control Act, 15 U.S.C. § 2610(c)

Dear Mr. and Mrs. Orling:

The U.S. Environmental Protection Agency, Region 5 is hereby serving the enclosed Subpoena Duces Tecum (Subpoena) on Mr. and Mrs. Roy Orling (Respondents or you). EPA is investigating whether Respondents have complied with the Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property rule, codified at 40 C.F.R. Part 745, Subpart F (Disclosure Rule), in connection with the lease or sale of any property in which Respondents have any ownership or management interest (e.g., as an agent), either personally or through any business entity. EPA promulgated the Disclosure Rule to implement the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4852, *et seq.*

Section 11(c) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2610(c), authorizes the EPA Administrator to require that witnesses answer questions and provide reports, papers, documents, and other information to carry out the purposes of TSCA. The Subpoena requires you to send all information and copies of supporting documents requested in Attachment A to the Subpoena by first class mail within 30 days of receipt of the Subpoena.

EPA may use the information you provide in response to this Subpoena in an administrative, civil, or criminal action.

We have enclosed an EPA information sheet entitled U.S. EPA Small Business Resources which may be helpful if Respondents qualify as a small business.

If you have any questions concerning this Subpoena, please contact Mary McAuliffe, EPA Associate Regional Counsel, at (312) 886-6237.

Sincerely,



5/ David Star  
Chief  
Pesticides & Toxics Compliance Section

Enclosures

cc: Michael Lawyer  
U.S. Department of Housing and Urban Development

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )

Mr. and Mrs. Roy Orling. )  
\_\_\_\_\_ )

SUBPOENA DUCES TECUM

TO: Mr. and Mrs. Roy Orling  
936 Dustwhirl Drive  
Union, Kentucky 41091

**Mr. and Mrs. Roy Orling IS HEREBY COMMANDED**, pursuant to Section 11(c) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2610(c), to submit all information and copies of documents requested in Attachment A to this Subpoena within 30 days of your receipt of this Subpoena by mailing the required information and documents first class to:

**PLACE:** Julie Morris  
Pesticides and Toxics Compliance Section (LC-8J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

**SPECIFICALLY, YOU MUST:**

1. Review Attachment A and the declaration attached to this Subpoena. The instructions, definitions, information and document requests, and declaration are an integral component of the Subpoena which you must follow to comply with the Subpoena.
2. Provide a clear and complete narrative response to each item in Attachment A that calls for a narrative response. You may supplement your narrative response with documents.
3. Include true, complete, and accurate copies of ALL documents requested in Attachment A as specified in the instructions
4. Include the attached declaration. Please take care to read the declaration carefully and be sure that you understand it before you sign and swear to it.
5. Mail your response first class within 30 days of your receipt of this Subpoena. If it is absolutely necessary to request an extension of time to respond, you must immediately contact the person named above.
6. Provide all requested documents. If you claim that any document, or part of the document, requested by this Subpoena is confidential business information, you still must provide that document.

You may assert a business confidentiality claim under 40 C.F.R. Part 2, Subpart B for any part of the information you submit to us. Information subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth at 40 C.F.R. Part 2, Subpart B. If you do not assert a business confidentiality claim when you submit the information, EPA may make this information available to the public without further notice. Any business confidentiality claim must conform to the requirements at 40 C.F.R. § 2.203(b).


EPA may use the information you provide in response to this Subpoena in an administrative, civil, or criminal action. This Subpoena is not subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. §§ 3501, *et seq.*, because it seeks the collection of information from specific individuals or entities as part of an administrative action or investigation.

Under Section 16 of TSCA, 15 U.S.C. § 2615, and 40 C.F.R. Part 19, EPA is authorized to seek civil penalties of up to \$37,500 per day against Mr. and Mrs. Roy Orling for failing or refusing to submit the information required by the Subpoena. Further, under 18 U.S.C. § 1001, you may be fined or imprisoned for up to five years for knowingly or willfully: (1) falsifying, concealing, or covering up a material fact; (2) making any material false, fictitious, fraudulent statement or representation; or (3) making or using any false writing or document knowing it contains any materially false, fictitious, or fraudulent statement.

**FAILURE TO FULLY COMPLY WITH THIS SUBPOENA MAY RESULT IN A COURT ACTION AGAINST YOU.**

DEC 10 2012

Issued on \_\_\_\_\_, 2012.

  
for/ David Star  
Chief  
Pesticides & Toxics Compliance Section

## ATTACHMENT A

### I. Instructions

1. You must number each of your responses so that the number of the response corresponds with the number of the item in Part III of this Attachment.
2. For each document you submit, clearly and precisely identify its title, author, date of preparation, and subject matter. You must number each document to correspond with the number of the item requesting the document in Part III of this Attachment. For example, if you are submitting a document in response to Item No. 2, the document should be marked "Response to Item No. 2."
3. Upon receipt of this Subpoena, you and your affiliates and agents must retain all documents requested by this Subpoena. Destruction of any such documents constitutes a failure to comply with this Subpoena and may constitute a crime. This requirement is in addition to any other record retention requirement in the Disclosure Rule.
4. This Subpoena covers all information, documents, and records described in Part III of this Attachment that are in your possession or control, or in the possession or control of your current or former employees, agents, contractors, accountants, or attorneys. You must provide the information whether or not it is based on your personal knowledge and regardless of the source. The requested information includes information relevant to oral as well as written contracts for the lease, rental, or sale of residential real estate. Where information necessary for a complete response is not in your possession, state this fact in your response and, if possible, identify any source that either has or is likely to have such information.
5. In answering each item, identify all persons by name, title, and telephone number, who contributed information and documents. If any information sought by this Subpoena is not contained in a document, you must identify for each piece of information, the person(s) who provided the information, the basis for each person's knowledge, the position occupied by the person providing the response, and the person's address and supervisor's name.
6. You must provide the following information regarding each document which was, but is no longer, in your possession, custody, or control:
  - a. The disposition of the document;
  - b. The date such disposition was made;
  - c. The present custodian of the document and the custodian's address, or, if the document no longer exists, so state;
  - d. The person who made the decision regarding the disposition of the document;
  - e. The reason for the disposition; and

- f. A description of the document and its contents, including the title, date, and author.

## **II. Definitions**

**Please read these definitions carefully to properly comply with the terms of this Subpoena.**

Unless otherwise defined below, the terms used in this Subpoena have the meanings given in Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and 40 C.F.R. Part 745, Subpart F.

1. "Agent" and "broker" mean any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing housing constructed prior to 1978. This term does not apply to the purchaser or any purchaser's agent who receives all compensation from the purchaser.
2. "Buyer" or "purchaser" means any entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.
3. "Document" means the original or an identical and readable copy thereof, and all non-identical copies (whether different from the original by reason of notations made on such copies or otherwise), of any writings or records of any type or description, however created, produced or reproduced, including but not limited to any final contracts, contingency contracts, riders, agreements, papers, books, records, letters, photographs, correspondence, communications, telegrams, cables, telex messages, memoranda, notes, notations, work papers, transcripts, minutes, reports and recordings of telephone or other conversations, or of interviews, conferences, or other meetings, affidavits, statements, summaries, opinions, reports, studies, analyses, evaluations, jottings, agendas, bulletins, notices, announcements, advertisements, instructions, charts, manuals, blueprints, brochures, publications, schedules, price lists, client lists, journals, statistical records, desk calendars, appointment books, diaries, lists, tabulations, sound recordings, computer printouts, data processing program libraries, data processing input and output, microfilm, books of accounts, records and invoices reflecting business operations, all records kept by electronic, photographic or mechanical means, any notes or drafts related to the foregoing, and all things similar to any of the foregoing, however denominated.
4. "Identify" means, with respect to a person, provide the person's full name, current or last known personal address, current or last known business address, and current or last known telephone number.
5. "Lead-based paint" means paint or other surface coatings which contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

6. "Lead-based paint hazard" means any condition which causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead contaminated paint which is deteriorating or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate federal agency.
7. "Lessee" means any entity that enters into an agreement to lease, rent, or sublease an apartment, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.
8. "Lessor" means any entity that offers apartments for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.
9. "Property" and "properties" include all properties and all individual units owned and/or managed by you.
10. "Risk assessment" means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including: information gathering regarding the age and history of the housing and occupancy by children under age six; visual inspection; limited wipe sampling or other environmental sampling techniques; other activity as may be appropriate; and any report explaining the results of the investigation.
11. "Seller" means any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. The term "seller" also includes any entity that transfers shares in a cooperatively owned project, in return for consideration; and an entity that transfers its interest in a leasehold, in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement, in return for consideration.
12. "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.
13. "You" or "Respondents" mean Mr. and Mrs. Roy Orling and all business entities in which Mr. and Mrs. Roy Orling have or had any ownership or management interest, and any officers, managers, employees, contractors, partners, trustees, assigns, subsidiaries, and agents of Mr. and Mrs. Roy Orling or of such business entities.

### **III. Information and Documents You Are Required to Submit to EPA**

The information you are required to submit by this Subpoena covers all residential rental agreements and leases, rental transactions, and sales transactions where you had an ownership, financial, or managerial interest. This Subpoena covers all information and documents from March 2010 to the present unless the request specifies another period of time.

1. Identify all properties in which, for any period of time since March 2010, you have or had any ownership or management interest (e.g., as an agent), either personally or through any business. For each property you must provide the following information:
  - a. The date of construction;
  - b. State whether you have an ownership interest either directly or indirectly and whether you manage the property. State the type of interest you have (i.e., partnership, joint tenant, shareholder in corporation). Identify all other parties having an ownership or managerial interest (e.g., as an agent) by providing the full name, address, and phone number of each party and state whether each party has an ownership or managerial interest;
  - c. State the number of rental units within each building and the address of each rental unit within each building. State which units are efficiencies/studios; and
  - d. If you no longer own or manage the property, state when you either sold or ceased managing the property. Provide all documents pertaining to a change in the management or sale of the property.
2. For each property identified in your response to Item No. 1, above, provide all documents relating to the rental or leasing of the property, including but not limited to:
  - a. All leases or rental agreements, including all attachments;
  - b. All renewals of leases or rental agreements, including any changes to lease terms;
  - c. All documentation of rent increases;
  - d. If rent increases were communicated orally, provide copies of the rent receipt ledgers or year-to-year rent rolls that document the rent increases;
  - e. All lease applications;
  - f. All documents pertaining to the disclosure of lead-based paint or lead-based paint hazards;
  - g. All other documents that may have information regarding the name(s) or age(s), or both of lessees and persons living with lessees; and
  - h. All documentation pertaining to the early termination of any lease.



3. For any property for which you are unable to provide leasing documentation as requested in Item No. 2, above, explain the reason why such documents do not exist or are unavailable.
4. For each property identified in your response to Item No. 1, above, provide copies of all documents relating to the sale of the property, including but not limited to:
  - a. All sales contracts or sales agreements, including all attachments;
  - b. All buyers' offers to purchase any properties;
  - c. All documents pertaining to the disclosure of lead-based paint or lead-based paint hazards; and
  - d. All other documents that may have information regarding the name(s) or ages, or both of buyers or persons living with buyers.
5. For each property identified in your response to Item No. 1, above, provide all documents, for any period of time since March 2007, relating to the presence or absence of lead-based paint, or lead-based paint hazards, including but not limited to:
  - a. All reports and inspections pertaining to the presence of lead-based paint or lead-based paint hazards; and
  - b. All documents pertaining to the abatement of lead-based paint or lead-based paint hazards, including but not limited to, inspections conducted by representatives of any state, county, or city, including each city's Department of Health; mitigation plans; orders of abatement; certificates of completion; and notices concerning lead.
6. For each property identified in your response to Item No. 1, above, state whether it contained or contains any lead-based paint or lead-based paint hazards that were known to you before the properties were leased, rented, or sold. In addition, state the date(s) on which you became aware of such lead-based paint or lead-based paint hazards and the basis for such knowledge.
7. State whether you are aware of the lead disclosure requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and its implementing regulations at 24 C.F.R. Part 5, Subpart H and 40 C.F.R. Part 745, Subpart F (more commonly known as the Disclosure Rule) which require certain lead disclosure actions in the leasing, rental, and sale of properties constructed before 1978. In addition, state when and how you first became aware of the requirements of the Disclosure Rule.
8. For each property identified in your response to Item No. 1, above, state whether you were or are aware of any lessee or any individual living with a lessee that had or has a lead-related health problem or had a blood lead level of 10 or greater (i.e., 10 ug/dL or

greater) for any period of time since March 2007. For each person identified, state the dates the person lived in the property, state how and when you became aware of the lead problem, and provide any information known to you about the severity of the lead problem such as the numerical blood lead level. In addition provide the following documents:

- a. All notices from a state or local agency that a lessee or an individual living with the lessee had a health-related lead problem or had a blood lead level of 10 or greater (i.e., 10 ug/dL or greater); and
  - b. All other documents indicating the presence of children with an elevated blood lead level living in the property.
9. For each property identified in your response to Item No. 1, above, state whether you received any complaints from any lessee or individual living with a lessee pertaining to lead problems, the presence of lead-based paint, or lead-based paint hazards for any period of time since March 2010. If you received such complaints, state the substance of the complaint, state the date each complaint was made, identify the individual who made the complaint, and identify the property to which the complaint pertained.
10. Provide all documents which support your responses to Item No. 1 through Item No. 9, above.

Office or Title: \_\_\_\_\_